UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARK MANCUSO, on behalf of himself
and all others similarly situated**,**

        Plaintiff,

    -against-

RFA BRANDS, LLC, d/b/a MYCHARGE,

        Defendant.

Civil Action No. 6:18-cv-06807-DGL

CLASS ACTION

DEFENDANT RFA BRANDS, LLC'S NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT

BK
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PLEASE TAKE NOTICE that upon the accompanying memorandum of law and upon all the pleadings and proceedings had herein, Defendant RFA Brands, LLC ("RFA Brands"), by and through its undersigned counsel, shall move before the Honorable David G. Larimer at the United States Courthouse for the Western District of New York, 100 State Street. Rochester, New York 14614, for an order pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 8(a) dismissing Plaintiff's Complaint (Dkt. # 1), and for such other, further, or different relief as the Court deems just and proper. Based on the foregoing, RFA Brands respectfully requests that the Court grant its Motion and dismiss Plaintiff's Complaint in its entirety with prejudice pursuant to Fed. R. Civ. P. 8(a), 12(b)(1), and 12(b)(6).

                                        Respectfully submitted,

                                        BROOKS KUSHMAN P.C.

Date: <u>January 4, 2019</u>

                                         /s/ Rebecca J. Cantor
                                        Rebecca J. Cantor (NY Bar 4698130)
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                                        Attorneys for Defendant

BK
BROOKS|KUSHMAN

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on <u>January 4, 2019</u>, I electronically filed the foregoing *Notice of Motion and Motion to Dismiss the Complaint* with the Clerk of the Court for the Western District of New York using the ECF System which will send notification to the registered participants of the ECF System as listed on the Court's Notice of Electronic Filing.

BROOKS KUSHMAN P.C.

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